

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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Federal Communications Commission
Office of Secretary

In the Matter of:)

Federal-State Joint Board on)
Universal Service)
_____)

CC Docket No. 96-45

DOCKET FILE COPY ORIGINAL

COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE
UTILITY CONSUMER ADVOCATES (NASUCA)
ON THE RECOMMENDED DECISION
OF THE FEDERAL-STATE JOINT BOARD

NATIONAL ASSOCIATION OF STATE
UTILITY CONSUMER ADVOCATES
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DATED: December 19, 1996

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SUMMARY

NASUCA supports the Joint Board's recommendation to reduce the Subscriber Line Charge (SLC). However, the Joint's Board tied its proposed reduction to Commission action regarding a universal service funding base and recovery of pay telephone costs. NASUCA believes that Section 254(k) of the Telecommunications Act of 1996 requires the Commission to reduce the SLC regardless of the revenue base that is adopted for the universal service fund or any determination about the recovery of pay telephone costs. Pursuant to Section 254(k), the recovery of 50% of interstate loop costs through the SLC would represent a "reasonable share" of joint and common loop costs to be recovered from universal service charges. While the 50% allocation should be the maximum amount of interstate loop costs recovered from the SLC, it would also be reasonable for the SLC to recover less than 50% of these common line costs.

In general, NASUCA supports the Joint Board's recommendations for modifying the Lifeline Assistance Programs. The Commission should adopt the recommendations to: 1) include voluntary toll limitation in Lifeline; 2) prohibit carriers from disconnecting Lifeline service for non-payment of toll charges; 3) prohibit service deposits for lifeline customers who voluntarily elect to receive toll blocking; and 4) modify the Lifeline program to reach customers in every state.

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INTRODUCTION

In response to a request for comment issued by the Federal Communications Commission ("FCC") on November 18, 1996, the National Association of State Utility Consumer Advocates ("NASUCA") files these comments concerning the Recommended Decision of the Federal-State Joint Board on Universal Service ("Recommended Decision") released on November 8, 1996 under CC Docket No. 96-45. The Recommended Decision presents a comprehensive new set of universal service support mechanisms, pursuant to the principles and requirements of the Telecommunications Act of 1996 ("the Act").

NASUCA is a national association of 41 offices in 38 states and the District of Columbia authorized by state law to represent utility consumers in matters before state and federal regulatory bodies. NASUCA members have been active

participants at the state and federal level in the creation of various policies relating to Universal Service. NASUCA submitted comments and ex-parte reply comments to the Federal-State Joint Board on Universal Service.

These comments address two areas that NASUCA members believe are crucial to meeting the Act's universal service requirements: 1) reduction or elimination of the Subscriber Line Charge ("SLC"); and 2) recommended changes to federal lifeline assistance programs.¹

I. REDUCTION OF THE SLC IS NECESSARY TO MEET THE REQUIREMENTS IN SECTION 254 (k) OF THE TELECOMMUNICATIONS ACT OF 1996.

NASUCA supports the Joint Board's recommendations that the \$3.50 SLC cap for primary residential and single business lines should not increase. (¶754) The SLC is an unavoidable charge that is incurred upon subscription to local telephone service. Thus, an increase to the SLC would amount to a rate increase for end users. An increase associated with proposals to restructure access charges could amount to a "rate rebalancing". Rate increases and rate rebalancing are beyond the scope of this proceeding. To the extent that they would render telephone service less affordable and cause subscribership to decline, increases to the SLC would be contrary to the Act's mandate to advance universal service (§254 (b)). The Joint Board further recommended that the SLC cap be reduced. The Joint Board, however, tied reduction of the SLC cap to the adoption of a universal service fund revenue base comprising interstate and intrastate services, and to the recovery of

¹ On November 19, 1996, NASUCA passed a resolution regarding these issues. The resolution, "Supporting a Reduction in the Residential and Single Line Business Subscriber Line Charges and Increased Federal Contribution to the Lifeline Assistance Program in Response to the Recommended Decision of the Universal Service Joint Board," is Attachment A to these comments.

pay telephone costs. (¶754) NASUCA believes that, through the SLC, basic exchange service customers are bearing an unreasonable share of interstate common loop costs; and, therefore, the Commission is required by the Act to reduce the SLC cap, regardless of the revenue base that is adopted for the universal service fund or any determination about the recovery of pay telephone costs. The Joint Board's recommended SLC reduction is one step in redressing the existing inequity of loop cost recovery through the SLC, but it does not go far enough.

A. The SLC Constitutes Part of a Customer's Universal Service Charges and Therefore is Subject to the Requirements of Section 254 (k).

The Commission should treat the SLC as a charge paid by a customer to receive universal service. The SLC is a flat charge assessed to all customers who purchase local telephone service. Furthermore, the Joint Board recognized that because the SLC is a charge assessed directly on local telephone subscribers it has an impact on affordability. (¶ 769)

For all practical purposes, the SLC constitutes part of a customer's basic service bill. The SLC is a fixed charge that is not tied to usage. The magnitude of the SLC cannot be reduced by any action taken by a customer who is trying to economize. The SLC could not be avoided by an end user who did not make a single telephone call, but maintained a telephone only for receiving calls or for use in emergencies. The SLC is incurred automatically by virtue of having a telephone in a home or business. It is part and parcel of a telephone service customer's bill for universal service.

Section 254 (k) of the Act states that federal and state regulators shall establish guidelines ". . . to ensure that services included in the definition of

universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services." (emphasis added) This section of the Act obviously applies to basic local exchange service, because the functions comprising what is commonly accepted as basic exchange service are included in the definition of universal service recommended by the Joint Board. (¶46) The cost of universal service to a customer clearly encompasses the SLC, since the SLC is an unavoidable charge that is incurred upon subscription to local service.

The SLC is assessed to local exchange service customers to recover a portion of local exchange carrier interstate local loop costs. (¶188) The local loop represents the "common line" that is necessary for the provision of virtually any service that relies on the local telephone network to reach subscribers. (¶273) In this manner, it is not a facility or cost that should be exclusively assigned to any one service. Rather, it is a joint and common or shared cost that should be recovered from many services.

The Commission, the Joint Board, the United States Supreme Court and many states have found that the cost of the loop is a joint, common or shared cost.² In this regard, the Joint Board acknowledged "that the loop is essential for the provision of all services, not just those supported by the federal universal service mechanisms." (¶273) The Commission rules also recognize the common cost nature of the loop, defining it as "(S)ubscriber or common lines that are jointly used for local exchange service and exchange access for state and interstate

² The United States Supreme Court and many state commissions have found that loop costs are joint, common or shared costs. For a summary of their findings that is in the record of this proceeding see the Ex Parte Reply Comments of the National Association of State Utility Consumer Advocates (NASUCA), June 26, 1996, pp. 6-12.

interexchange services.”³ The Commission’s recent local competition order stated unequivocally that loop costs are common costs:

As discussed in greater detail below, separate telecommunications services are typically provided over shared network facilities, the costs of which may be joint or common with respect to some services. The costs of local loops and their associated line cards in local switches, for example, are common with respect to interstate access service and local exchange service, because once these facilities are installed to provide one service they are able to provide the other at no additional cost. (emphasis added)⁴

Since the SLC constitutes part of a customer’s universal service charges and recovers costs the Commission acknowledges to be common costs, Commission decisions about the magnitude of the SLC are subject to the requirements of §254 (k).

B. The SLC Must be Reduced to Meet the Act’s Requirement that Universal Service Bear Only a Reasonable Share of Joint and Common Costs

Section 254 (k) stipulates that the services included in the definition of universal service “should bear no more than a reasonable share of joint and common costs.” This provision is reinforced by the Congressional Joint Explanatory Statement of the Committee of Conference (“Conference Report”), which explains the provisions originally contained in Senate Bill S. 652. S. 652 required federal and state guidelines to ensure that universal service should “bear no more than a reasonable share (and may bear less than a reasonable share) of the joint and common costs of the facilities used to provide both competitive and

³ 47 C.F.R. §36.154.

⁴ Federal Communications Commission, CC Docket No. 96-98 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996/CC Docket 95-185, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, para. 678. The Commission’s determination that the loop is a common cost is consistent with previous Commission findings. See NASUCA ex parte reply comments, *op. cit.*, p. 6.

noncompetitive services.”⁵ (emphasis added) Pursuant to §254 (k), it is incumbent upon the Commission to ensure that the SLC does not impose an unreasonable share of common loop costs on end users.

To ensure that the SLC does not recover an “unreasonable” share of interstate loop costs, the Commission must determine what constitutes a “reasonable” share of these costs for end users to bear. When the Commission last addressed the SLC in 1987, it accepted the finding of the Joint Board that a “fair share” of revenues to be recovered by IXC’s through the CCLC would be approximately 50% of interstate allocated loop costs,⁶ with the remaining 50% to be recovered through the SLC. NASUCA submits that a maximum SLC recovery of 50% of interstate common line costs would be a “reasonable share,” provided, consistent with the Universal Service Joint Board’s recommendation, that the costs being recovered are the costs of a loop designed for voice grade service and not costs incurred to provide broadband and other enhanced services that are not part of basic telephone service. (¶273)

⁵ U.S. House of Representatives, 104th congress, 2nd Session, Report 104-458, Telecommunications Act of 1996, Conference Report, January 31, 1996, p. 129. See also NASUCA ex parte reply comments, *op. cit.*, p. 13.

⁶ MTS and WATS Market Structure, Amendment to part 67 of the Commission’s Rules and Establishment of a Joint-Board, *Report and Order*, 2 FCC Rcd 2953, 2958 n. 36, (1987). It is important to note that the CCLC is not a universal service support mechanism. Rather, it is a payment made by interexchange carriers in exchange for the ability to complete calls using telephone loops. Telephone loops are commonly used by toll and other services and it is appropriate that toll service bear a portion of loop costs. See, e.g., Florida PSC comments at 21-23; Washington UTC comments at 18-19; DC PSC reply comments at 9-10; Maine PUC comments at 17; Bell Atlantic comments at 10-11; Rural Iowa Indep. Tel. Ass’n comments at 6; RTC comments at 17-18; DC People’s Counsel comments at 17; NASUCA comments at 4-6; AARP comments at 14-15; NECA further comments at 37; Harris comments at 13; United Utilities reply comments at 3-4; Teleport comments at 10-11; Texas OPUC comments at 6-7. See also ex parte filing by Public Counsel for the State of Florida, October 1, 1996, Dr. David Gabel, “An Assessment of Universal Service,” a Report Presented on Behalf of the Office of Public Counsel for the State of Florida, p. 6.

Based on the Commission's own standard, basic exchange customers are currently bearing an unreasonable share of common line costs. As reflected in the record, and in NASUCA's resolution, SLC revenues presently account for more than 66% of interstate common line costs⁷, with the remainder recovered from the CCLC. In its 1987 recommended decision, the Joint Board estimated that as a result of full implementation of the \$3.50 SLC in 1989, IXCs would pay approximately 50% of the total interstate revenue requirement for loop costs, while the SLC would pay 50%.⁸ The SLC is currently recovering a far greater share of loop costs than the 50% anticipated by the Joint Board. Further, the residential SLC has not been reduced since it was increased to \$3.50 in 1989⁹, even though many other telecommunications rates set by the FCC have been reduced since that time.

NASUCA submits that pursuant to §254 (k), the Commission must, as a matter of law, reduce the SLC. At a minimum, the SLC should be reduced to a level that would limit recovery of interstate common line costs to 50 %.

The legislative history of the Act provides justification for even greater reductions, as evidenced by the language, cited in the Conference Report, indicating that universal service may bear less than a "reasonable share" of joint and common costs. Reductions to a level below 50 percent would be justified by the fact that for

⁷ Ex parte letter filed by Kathryn Falk, Director of Government Relations, NECA, September 4, 1996.

⁸ MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Joint Board Recommended Decision*, 2 FCC Rcd 2324, para 49 (1987), *Report and Order*, CC Docket Nos. 78-72 and 80-286, 2 FCC Rcd 2953 (1987); *Memorandum Opinion and Order on Reconsideration and Order Inviting Comments*, 3 FCC Rcd. 4543 (1988)

⁹ MTS and WATS Market Structure, Amendment to part 67 of the Commission's Rules and Establishment of a Joint-Board, *Report and Order*, *op. cit.*

some time customers have been paying more than 50% of these common costs through the SLC. While other services have benefited from paying a reduced share of common line costs, basic exchange customers have not enjoyed similar reductions to the SLC and, instead, have borne an unreasonable share of these costs.

Finally, as the Commission contemplates the accelerating transition to competitive local exchange markets, we submit it is important to consider whether the SLC can or should continue to exist in a competitive market. The continued existence of the SLC would be at odds with the proper functioning of a competitive market. New entrants into the local exchange service business will recover the cost of the loop (and other joint, common and shared facilities) through the prices for all of the services that use the loop, and may or may not include the imposition of a SLC. It is not clear that the SLC is a necessary or desirable means of recovering common line costs in a competitive local exchange market.

C. The Commission Should Reject Arguments that Changes to Low Income Assistance Programs Eliminate the Need to Reduce the SLC

It is possible that some respondents will attempt to persuade the Commission that by adopting recommended changes to low income assistance programs, the Commission will eliminate the need to implement proposed SLC reductions. Any such arguments should be rejected. The Commission has a legal obligation to reduce the SLC pursuant to § 254 (k), and this obligation is not negated or altered in any way by changes to the Lifeline programs. Further, the Joint Board has recommended that the SLC be delinked from Lifeline and Link Up. (¶423) By adopting this recommendation, the Commission would remove any possible connection between changes to Lifeline programs and reductions to the SLC.

Changes to the low income support programs have no bearing whatsoever on SLC reductions that are required pursuant to the Act.

**II. THE COMMISSION SHOULD ADOPT THE JOINT BOARD'S
RECOMMENDATIONS FOR STRENGTHENING THE LIFELINE
ASSISTANCE PROGRAMS**

The Joint Board has recognized the Act's intent to promote and expand universal service and has recommended significant changes to the Commission's Lifeline and Link Up programs that can further this goal substantially. A key objective of these recommendations is to ensure the availability of low income universal service support in all regions of the country. (¶383) NASUCA fully supports this objective and believes that it would be advanced if the Commission adopts the Joint Board recommendations discussed below.

**A. The Lifeline Assistance Program Should be Modified to Include
Voluntary Toll Limitation**

The recommendation to include voluntary toll limitation, including toll blocking and toll control, in the Lifeline Assistance Program for eligible low income customers should be adopted. (¶384) The ability to block or control toll calling can be an effective means for customers to ensure that they do not incur large (and often unplayable) telephone bills due to unauthorized calling.

B. The Commission Should Adopt the Joint Board's Recommendation to Prohibit Carriers from Disconnecting Lifeline Service for Non-Payment of Toll Charges

The Joint Board recommendation that Lifeline customers should not be subject to disconnection of service for nonpayment of toll charges should be adopted. The Joint Board correctly asserts that this provision is consistent with §254 (c) in that connection to local service is "essential to education, public health, or public safety," and "consistent with the public interest, convenience, and necessity." (§387) As the Notice of Proposed Rulemaking in this docket noted, recent studies suggest that disconnection for nonpayment of toll charges is a significant barrier to universal service. (§387)

The Joint Board notes that low-income customers "should not be prevented from making local telephone calls because they did not pay long distance charges, because such local calls could be emergency telephone calls or calls to schools, government offices, or health care providers." (§386) An additional factor that should be considered is that if a subscriber's telephone is disconnected, it becomes more difficult for the subscriber to find and maintain employment. The lower a person's income, the more difficult it is to pay both current and overdue telephone bills. Further, charges for reconnecting service can be a significant deterrent to low income subscribers.

C. The Commission Should Prohibit Service Deposits for Lifeline Customers who Voluntarily Elect to Receive Toll Blocking

NASUCA supports the Joint Board recommendation that precludes carriers from requiring deposits from Lifeline-participating customers who

voluntarily elect to receive toll limitation services. (¶389) Requirements for substantial service deposits can pose a significant barrier for low income customers who are trying to establish telephone service. Imposing such a prohibition would be consistent with the mandates of the Act, which require the Commission to "base policies for the preservation and advancement of universal service. . ." (emphasis added) (TA 96 §254 (b)) because it would remove a major impediment that currently deters low income customers from subscribing to telephone service. Further, the risk to LECs should be minimal because a voluntary decision to utilize toll limitation services will enable customers to avoid the large toll bills that can be most often responsible for generating overdue bills and/or non-payment of large bills.

D. The Commission Should Adopt the Joint Board's Recommendations for Modifying the Lifeline Program to Reach Low Income Consumers in Every State

NASUCA supports the Joint Board recommendations to modify the federal Lifeline program to reach low-income consumers in every state. (¶417) To provide incentives for the expansion of the program, the Commission should adopt the recommendation to eliminate the state matching requirement and provide for a baseline level of federal support that would be available to low income consumers in all states. The level of support should be increased to at least the \$5.25 suggested by the Joint Board. The Commission should also implement the recommendation to provide additional federal support equal to one half of any support generated from the intrastate jurisdiction, up to a maximum of \$7.00. (¶419)

CONCLUSION

NASUCA requests that the Commission consider and adopt these
Comments in the Final Order issued.

Respectfully submitted,

NATIONAL ASSOCIATION OF STATE
UTILITY CONSUMER ADVOCATES

By: 

Charles A. Acquard
Executive Director, NASUCA

By: 

Regina Costa
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(TURN)

On behalf of:

NASUCA
1133 15th Street, N.W., Suite 550
Washington, D.C. 20005

1996-07

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

RESOLUTION

**Supporting a Reduction in the Residential and Single Line Business
Subscriber Line Charges and Increased Federal Contribution to
the Lifeline Assistance Program in Response to the Recommended Decision
of the Universal Service Joint Board**

- WHEREAS, the federal-state Joint Board, of which the Missouri Public Counsel Martha Hogerty was a member, issued a Recommended Decision on November 8, 1996 at In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 which concerned the implementation of Section 254 of the Telecommunications Act of 1996;
- WHEREAS, contained within Section 254 are Subsection 254(b)(2), requiring quality service to be provided at just, reasonable, and affordable rates; Subsection 254(b)(4) requiring telecommunications providers, rather than end users, to make equitable and nondiscriminatory contributions to the preservation and advancement of universal service; Subsection 254(i) requiring universal service to be provided at just, reasonable, and affordable rates; and 254(k) requiring that universal service should bear no more than a reasonable share of joint and common costs;
- WHEREAS, various state consumer advocates, and other parties have filed comments in this proceeding advocating, *inter alia*, that the Subscriber Line Charge (SLC) should be reduced and that federal benefits to low income consumers should be increased;
- WHEREAS, the residential SLC has not been reduced since it was increased to \$3.50 in 1989, even though many other telecommunications rates set by the FCC have been reduced since that time;
- WHEREAS, Carrier Common Line Charge (CCLC) reductions have occurred in the past and these reductions have facilitated reductions in toll rates, but no SLC rate reductions have occurred;
- WHEREAS, all SLC revenue represents approximately 66% of revenue used to recover the interstate portion of common line cost with the remainder recovered from the CCLC, which is directly assessed to interexchange carriers;

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WHEREAS, the FCC concluded in Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, 2 FCC Rcd 2953, 2958 n.36, (1987) that payment of 50% of common line costs by the Interexchange Carriers through the CCLC would represent a "fair share" of common line cost recovery;

WHEREAS, consumers should share in the productivity benefits realized by the telecommunications industry;

WHEREAS, NASUCA supports reducing, and expeditious elimination of, the SLC as the SLC functions as a component of local rates;

WHEREAS, many low income consumers continue to go without telephone service;

WHEREAS, many states have not implemented Lifeline programs or have implemented such programs at less than the maximum available federal benefit;

WHEREAS, the Joint Board on November 8, 1996 issued a Recommended Decision and such Recommended Decision will be reviewed and voted upon by the full Federal Communications Commission on May 8, 1997;

WHEREAS, the Recommended Decision conditionally proposes that the SLC for the initial Residential connection for the primary residence and for Single Line Business customers should be reduced by one half of the CCLC reduction produced by the transfer of the Long Term Support revenues from the CCLC to a High Cost Fund and, also, by the CCLC reduction produced by the removal of pay phone support from the CCLC;

WHEREAS, the Recommended Decision proposes that all Lifeline customers will receive \$5.25 per month in federal assistance and that additional state assistance will be matched by federal assistance in a ratio of 2:1 up to a maximum \$7.00 federal contribution;

WHEREAS, the Recommended Decision proposes that Lifeline assistance should expand to all states and territories; that all Lifeline eligible customers may not lose local service for nonpayment of toll charges; that toll blocking and toll limitation services should be available at no charge for Lifeline customers; and that there shall be no service deposits required for Lifeline customers who elect toll blocking service;

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THEREFORE BE IT RESOLVED that NASUCA supports a reduction of the SLC as consumers should share in the productivity benefits enjoyed by the telecommunications industry by have not received any reduction in the SLC since it was set at \$3.50; consumers;

THEREFORE BE IT FURTHER RESOLVED that NASUCA supports the recommendation of the Joint Board as set forth above concerning assistance to low income consumers;

THEREFORE BE IT FURTHER RESOLVED that NASUCA supports a SLC reduction in the amount recommended by the Joint Board as a minimal step in redressing the inequity involving the SLC as demonstrated above;

THEREFORE BE IT FURTHER RESOLVED that NASUCA authorizes its Executive Committee to develop specific positions and to take appropriate actions consistent with the terms of this resolution. The Executive Committee shall notify the membership of any action taken pursuant to this resolution.

Approved by NASUCA:

San Francisco, California

Place

November 19, 1996

Date

Submitted by:

NASUCA Telecommunications Committee

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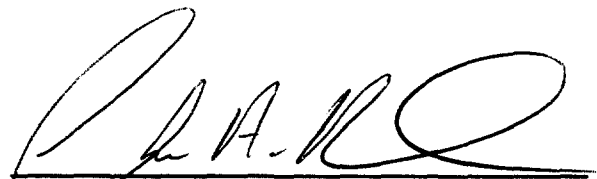
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CERTIFICATE OF SERVICE

I, Charles A. Acquard, hereby certify that copies of the foregoing "Comments of the National Association of State Utility Consumer Advocates (NASUCA) on the Recommended Decision of the Federal-State Joint Board" have been mailed by first class United States mail, postage prepaid, on the 19th day of December, 1996, to all parties of record as shown on the attached list.

A handwritten signature in black ink, appearing to read 'C. A. Acquard', written over a horizontal line.

Charles A. Acquard
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